

REMARKS

Applicant has thoroughly considered the Office action dated January 22, 2009 and has amended the application to more clearly set forth the invention. The pending claims and specification have been amended by this Amendment D. Reconsideration of the application as amended and in view of the following remarks is respectfully requested.

Amendments

Page 35, lines 7-9 of the specification are amended to avoid any conceivable suggestion that this passage is intended to suggest that the term “a system” may be implemented solely by software.

Page 36, 2nd paragraph of the specification is amended to delete references to a transmission channel, as requested by the examiner in a telephone call on or about November 27, 2007.

Claims 24 and 111 are amended to specify that the input video material is shot by a video camera”. This is supported by page 1, 3rd complete paragraph; and the paragraph on page 16 starting “The system may import...”.

Claims 24 and 111 are further amended, with support from the wording in Fig. 11, to require a step of displaying a product of the method “using a video display device”.

Claims 47 and 117 now require that that the program code means are “stored”, instead of embodied, in the computer usable medium.

Rejections under 35 U.S.C. 101

The examiner has rejected claim 1 and all of its dependent claims and claim 105 as non-statutory subject matter “based on the recited ‘system’ as being software or program”. However, applicant respectfully observes that the term “system” is standard part of patent

terminology, and very clearly is intended to limit the claim to an apparatus, not software, nor even a program stored on a physical recording medium. The relevant portion of the description which the examiner has relied upon (page 35, lines 7-9) does not, in our view, remotely suggest anything different. However, it is now rephrased to remove any ambiguity.

Claims 47 and all of its dependent claims and claim 117 are rejected due to the allegation that these claims read onto a signal. However, Claims 47 and 117 are presently amended to require that the program code means are “stored” in the computer usable medium. This is considered unambiguously to require that the recording medium is tangible. Signals do not “store” programs. The relevant portion of the description which the examiner has relied upon (page 36, lines 5-14) has been rephrased, again to remove any ambiguity.

Although the continuation sheet of the “Office action summary” indicates that the method claims (24-30, 32-33, 38-39, 43, 45, 106-111) are rejected, we believe this is a mistake, since none of these claims are referred to in the body of the office action, and thus no objection to them has been made.

Comments on recent US jurisprudence with regard to 35 U.S.C. 101

We believe that the presently presented claims are clearly allowable according to the principles developed in the most recent case law, particularly *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008). That decision reiterates that a method claim is patent eligible under § 101 if: either (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. The present method claims fulfill both of these tests.

With regard to test (1), the two independent method claims 24 and 111 require a “computerized method” in which data is not just processed but displayed using a “video display device”, thus the methods are tied to a computer, and not to any general purpose computer but instead to a particular computer which incorporates or is coupled to a video display device.

Yet more clearly, with regard to test (2), the claims 24 and 111 create an output video production from input video material. This is clearly the transformation of one article into another. We note that Bilski refers to and approves the decision *In re Abele* 684 F.2d, 902 (CCPA 1982). Bilski states (top of page 26):

“We held one of Abele's dependent claims to be drawn to patent-eligible subject matter where it specified that "said data is X-ray attenuation data produced in a two dimensional field by a computed tomography scanner." Abele, 684 F.2d at 908-09. This data clearly represented physical and tangible objects, namely the structure of bones, organs, and other body tissues. Thus, the transformation of that raw data into a particular visual depiction of a physical object on a display was sufficient to render that more narrowly-claimed process patent-eligible.

We further note for clarity that the electronic transformation of the data itself into a visual depiction in Abele was sufficient; the claim was not required to involve any transformation of the underlying physical object that the data represented.”

This is exactly the situation of the present claims, in which the input video material “represents physical and tangible objects”, not least because, as the claims are presently amended to require, the input video material is shot with a video camera; the claim is entirely about the generation of an output video production by transforming this real-world data.

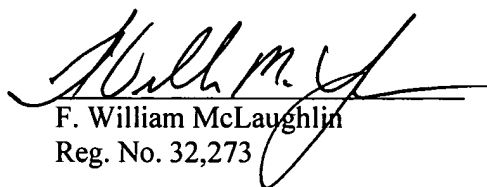
Furthermore, in the recent case *ex parte Gutta* (PBAI 2009) it was indicated that a step of displaying data could be held to impart patentability provided that the displaying is limited to a “particular structure”, not for example to the action of writing on paper. Claims 24 and 111 are limited to methods including display on a particular structure: “a video display device”.

Applicant respectfully submits that the pending claims fulfill the statutory requirements and are allowable over the cited art and that the subject application is now in condition for allowance.

The fact that applicant may not have specifically traversed any particular assertion by the Office should not be construed as indicating applicant's agreement therewith.

If helpful to advance this application, and in view of the long pendency of this application, the applicant suggests that the examiner telephone the applicant's undersigned attorney. It would also be possible to schedule a conference call including the Examiner, the applicant's undersigned attorney, applicant's local attorney and the applicant. However, since several of these individuals reside outside the United States, such a conference would need to be scheduled in advance.

Respectfully submitted,



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